IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8214 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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GORDHANBHAI C. PATEL - Petitioner(s)

Versus

KALOL NAGAR PALIKA - Respondent(s)

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Appearance :

MR. P.H. PATHAK for Petitioner(s).
RULE NOT RECD BACK for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/12/2005

ORAL JUDGMENT

1. The petitioner has filed this petition under Article-226 of the Constitution of India seeking a declaration from this Court to the effect that the termination of the services of the petitioner made by the respondent-Nagarpalika was illegal, invalid and inoperative in law and that the said termination is required to be quashed and set aside. The petitioner has also sought for a direction from this Court to

the respondent to reinstate the petitioner on his original post with continuity of service and full back-wages. The petitioner has further prayed for a direction to the respondent to consider the petitioner as a confirmed Medical Officer after completion of the probation period.

2. It is the case of the petitioner that the petitioner was appointed as a Medical Officer in the hospital viz. Sheth C.S. Municipal Hospital, Kalol, run by the respondent-Kalol Nagarpalika. The petitioner was called for interview on 3rd March, 1987 and he was selected for the post of Medical Officer *vide* letter dated 24th April, 1987. The petitioner joined the duties in the respondent-Nagarpalika with effect from 27th April, 1987 and since then, till the petitioner came to be terminated, the petitioner worked continuously without any break in service and there was no complaint about the performance of the duties as a Medical Officer of the Family Welfare Centre. During his service tenure, the petitioner was neither issued any chargesheet nor any memo regarding the dissatisfactory performance of his duties. During his tenure with the respondent-Nagarpalika, some complaint was filed by Shri Kantibhai Ramjibhai Patel alleging that the petitioner was asking for Rs.50/- for issuance of a medical certificate. The petitioner thereafter was served with a show cause notice by the Superintendent of the hospital on 1st November, 1988. It is stated in the petition that the said Shri Kantibhai wanted the report of grave injuries to him with a view to get more compensation in an accident claim. The petitioner refused to

give such a false report and hence, after receipt of the said report on 10th October, 1988, a complaint was given by him to the President of the Nagarpalika after about more than 20 days. The petitioner filed a detailed reply on 5th November, 1988. After receipt of the explanation from the petitioner, no further action was initiated by the Nagarpalika. However, the said issue was taken up by the General Body of the Nagarpalika in its meeting on 5th December, 1988 at Item No.22 of Agenda and pursuant to the said agenda, the General Body of the Nagarpalika decided to terminate the services of the petitioner with an immediate effect. It is further stated that no such order by the competent authority was served on the petitioner till this date.

3. Being aggrieved by the said termination, the present petition was filed before this Court invoking the writ jurisdiction of this Court under Article-226 of the Constitution of India.

4. Mr.P.H.Pathak, learned Advocate for the petitioner, submitted that the action of the respondent-Nagarpalika to terminate the services of the petitioner, relying on the complaint from a patient and without considering the explanation of the petitioner and without giving any opportunity of being heard, is in flagrant violation of the principles of natural justice and is unconstitutional, arbitrary and liable to be quashed and set aside. He further submitted that the probation period, which was mentioned in

the appointment order, was only for one year and there was no rule, which empowers the Nagarpalika to extend the probation period for further time. He, therefore, submitted that the petitioner should be treated to be confirmed in service and the petitioner's services could not have been terminated in such an arbitrary manner without following due procedure of law.

5. Mr.Pathak has further submitted that the respondent-Nagarpalika is an `industry' under Section 2(j) of the Industrial Disputes Act, 1947 and the petitioner is a `workman' under Section-2(s) of the Act. He submitted that the respondent-authority is under an obligation to follow the principles of `last come first go' in the case of retrenchment of the petitioner. He submitted that it is not the case of the Nagarpalika that the work was not available and so the services of the petitioner were terminated. He further submitted that there was permanent nature of work on the post on which the petitioner was working and 100% grant was given by the State Government and that keeping the juniors to the petitioner in service, the petitioner could not have been terminated by the respondent and particularly, when there was no chargesheet or memo given to the petitioner during the tenure of his service regarding dissatisfactory performance of his duties. He has further submitted that the action of the respondent, terminating the services of the petitioner, is in flagrant violation of the mandatory provisions of Section-25(F) read with Section-25(B) and (G) of the Act and Rule-81 of the

Gujarat Rules. He has further submitted that the respondent-Nagarpalika is under an obligation to obtain prior permission of the appropriate authority before terminating the services of the petitioner under Section-25(N) read with the rules framed thereunder.

6. In support of his submission that the petitioner is deemed to have been confirmed after the completion of the period of one year, Mr.Pathak relied on a decision of the Hon'ble Supreme Court in the case of ***Om Prakash Maurya vs. U.P. Co-operative Society Sugar Factories Federation Lucknow & Ors.***, ***1986 (II) LLJ 145***, wherein it is held that an employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and during the period of probation, the appointing authority may discharge the employee from service or revert him to his substantive post, if the authority is of the opinion that the employee has not made use of the opportunity given to him. But, there is no power in the appointing authority to extend the period of probation beyond the period of two years. Under the Regulation, an express order of confirmation has to be made on completion of probationary period. There is no express provisions on the status of an employee on the expiry of maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Since Regulation-17 does not permit the continuation of an employee on probation for more than two years it would follow that after the expiry of two years' probationary period, the employee stands

confirmed by implication.

It is also held by the Hon'ble Supreme Court that on the expiry of the maximum probationary period of two years the appellant cannot be deemed to continue on probation, instead he stood confirmed in the post by implication.

Mr.Pathak also relied on a decision of this Court in the case of ***Municipal Commissioner, Baroda vs. For & On Behalf of Narsing Sursing Padhiyar***, ***2004(3) GLH 358***, wherein it is held that when maximum period of probation is specified or fixed by the Corporation, beyond that extension, there is no need to have specific or positive orders from the Corporation about deemed confirmation. Once the respondent-employee cleared the period of probation of one and half years, further extension was without authority and therefore with effect from 11.7.1984, the respondent-employee is deemed to be confirmed on the post of Accountant. The Court further held that if rules do not prescribe any maximum period of probation beyond which it cannot be extended, then in such circumstances, after completion of such maximum period, the employee concerned is deemed to be confirmed in service.

Mr.Pathak has further relied upon a decision of the Hon'ble Supreme Court in the case of ***Nar Singh Pal vs. Union of India & Ors.***, ***AIR 2000 S.C. 1401***, wherein the Hon'ble Supreme Court has held that the order passed on a preliminary inquiry and on the basis of the regular departmental inquiry

and without issuing a chargesheet or giving opportunity of hearing, is an order punitive in nature and hence, the same is liable to be quashed and set aside.

On the basis of the aforesaid decisions and on the facts of the present case, Mr.Pathak strenuously submitted that the termination of the petitioner from the services of the respondent-Nagarpalika is absolutely illegal, invalid and contrary to the provisions of law and in violation of the principles of natural justice. He, therefore, submitted that the impugned termination may be quashed and set aside and the petitioner may be directed to be reinstated with full back-wages and continuity of service.

7. The petition was admitted and notice as to interim relief was issued by this Court on 14th December, 1988. However, no interim relief was granted. Initially, late Mr.G.M.Desai, the learned Advocate, filed his appearance on behalf of the respondent-Nagarpalika. However, after his death, fresh `Rule' was issued, but, nobody appears on behalf of the respondent-Nagarpalika.

8. The case of the petitioner is in a very narrow compass. The petitioner was appointed as a probationer and the probation period was of one year. It is admitted position that the probation period was not extended. The petitioner has not placed on record the rules of the respondent-Nagarpalika. It is nowhere stated in the petition about the maximum period of

probation. It is, therefore, difficult to presume that one year probation period mentioned in the appointment order is the maximum period of probation. Even after expiry of the period of one year from the date of appointment and/or from the date of resuming the duties as a Medical Officer with the respondent-Nagarpalika, the petitioner cannot be deemed to be confirmed and it is only when the maximum period of probation is prescribed and on expiry of the maximum period, the Court has considered the case of the petitioner as confirmed one. However, if there is no specific order for confirmation, then, merely on the basis of the period stated in the appointment order and without pointing out any rule to that effect, an employee cannot be considered to have been confirmed. If there is no rule to that effect, then, on expiry of the period of probation mentioned in the appointment order, an employee, in absence of the confirmation order, would not be considered as confirmed. Since the petitioner is not a confirmed employee, necessary procedure prescribed by law need not be compulsorily followed and the respondent-Nagarpalika is not bound to follow that procedure. On expiry of the period of probation, the petitioner's services will be presumed to have come to an end and if the petitioner is allowed thereafter to serve, then, the said period can also be considered as the probation period, in absence of any confirmation order. The petitioner has himself stated in the petition that the Nagarpalika in its meeting held on 5th December, 1988 decided to terminate the services of the petitioner on the so-called termination simpliciter with immediate effect. This fact itself suggests that the said order

of termination can never be termed as punitive in nature and it was termination simpliciter.

8. Even in view of the settled legal position, the finding given by the Labour Court is required to be upheld. In the case of ***Municipal Committee, Sirsa vs. Munshi Ram***, ***(2005) 2 S.C.C. 382***, the Hon'ble Supreme Court has observed that the respondent having been appointed as a probationer and his working having been found not to the satisfaction of the employer, it was open to the management to terminate his services. Assuming that there was an incident of misconduct or incompetency prior to his discharge from service, the same cannot *ipso facto* be termed as misconduct requiring an inquiry. It may be a ground for the employer's assessment of the workman's efficiency and efficacy to retain him in service, unless, of course, the workman is able to satisfy that the management for reasons other than efficiency wanted to remove him from services by exercising its power of discharge.

9. In the case of ***Kalpataru Vidya Samasthe (R) & Anr. vs. S.B. Gupta & Anr.***, ***(2005) 7 S.C.C. 524***, the Hon'ble Supreme Court has observed that it is now a well settled principle of law that the appointment made on probation/*ad hoc* for a specific period of time and such appointment comes to an end by efflux of time and the person holding such post can have no right to continue in the post. The Hon'ble Supreme Court has further observed that having accepted the terms and conditions stipulated in the appointment order and allowed the period for

which he was appointed to have been lapsed by efflux of time, he is not permitted to turn his back and say that the appointment was *de hors* the Rules or the terms and conditions stipulated in the appointment were not legally valid.

10. In the case of ***CREF Finance Ltd. vs. Shree Shanthi Homes (P) Ltd. & Anr.***, ***(2005) 7 S.C.C. 467***, and in the case of ***Rajasthan State Road Transport Corporation & Ors. vs. Zakir Hussain***, ***(2005) 7 S.C.C. 447***, wherein, after referring to its decision in the case of ***State of U.P. vs. Kaushal Kishore Shukla***, ***(1991) 1 S.C.C. 691***, the Hon'ble Supreme Court has observed that the respondent in the instant case is a temporary employee of the Rajasthan State Road Transport Corporation on probation for a period of two years. His services were terminated by an order of termination simpliciter. The order is innocuous without any stigma or evil consequences visiting him. The Court further held that the said order is not open to challenge. In this very judgement, the Court further observed that the terms of appointment are governed by the letter of appointment and, therefore, the management was well within its right to terminate the services of the respondent probationer during the period of probation if his services were not found to be satisfactory during the said period. The courts below and the High Court have committed serious error in decreeing the suit as prayed for and for directing reinstatement with full back wages.

11. Even otherwise the petitioner's services were

terminated in 1988; more than 17 years have passed; the petitioner is a qualified M.B.B.S. doctor and by passage of time, he might have obtained another assignment or might have engaged himself somewhere else. The petitioner's Advocate does not know about the present status of the petitioner. The allegation made against the petitioner, if is taken into consideration on its face value, then, in that case, it is a serious allegation. When a qualified doctor asks for an amount for issuing a certificate, it is contrary to the professional ethics and the employer cannot take such a fact very lightly. Instead of taking cognisance of the complaint made by the patient and passing any order to that effect, the General Body of the respondent-Nagarpalika has simply passed a resolution terminating the services of the petitioner.

12. Considering the overall view of the matter and after having considered the facts of the present case in light of the decided cases of the Hon'ble Supreme Court, this Court is of the view that the petitioner is not justified in invoking the writ jurisdiction of this Court under Article-226 of the Constitution of India. Since the petitioner himself has stated in the petition that he is a workman, a dispute could have been raised under the Industrial Disputes Act before the competent forum and even the resolution of the General Body of the Nagarpalika could have been challenged before the Collector under the Gujarat Municipalities Act. This is not a fit case where the Court has to exercise its equitable writ jurisdiction especially when the disputed questions of facts are involved.

The Court, therefore, is not inclined to grant any relief, as prayed for in the present petition. The petition, therefore, fails and is dismissed. Rule is discharged. No order as to costs.

[***K. A. Puj, J.***]

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